



October 1, 2002

Ms. Anne Cosper
Custodian of Records
Texas Funeral Service Commission
P.O. Box 12217
Austin, Texas 78711

OR2002-5509

Dear Ms. Cosper:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170049.

The Texas Funeral Service Commission (the "commission") received a request for nine categories of information related to an investigation of the requestors' business conducted by the commission. We note that your request for a decision does not address any portion of the request other than that for the commission's complaint file, nor have you raised any exceptions to disclosure of the remaining requested information. We assume that the commission has released this information to the extent that it exists. If you have not, you must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances). You claim that the requested complaint file is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and have reviewed the submitted information.

Section 552.101 encompasses confidentiality provisions such as the one following section 651.202 of the Occupations Code. Section 651.202 states in relevant part:

(c) The commission shall investigate each complaint received by the commission relating to a funeral director, embalmer, provisional license holder, funeral establishment, or other person licensed or registered under this chapter.

¹ Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

Occ. Code § 651.202(c). Section 651.203 provides

(a) The commission shall maintain a file on each written complaint filed with the commission. . . .

(b) Information in a file maintained under this section, other than information relating to a complaint that has not reached a final disposition, is public information.

Occ. Code § 651.203(a), (b). The submitted documents are the contents of a file that the commission compiled in regard to a complaint filed against a licensed business providing embalming services to funeral homes. Included in the documents is a letter from the commission to this licensee in which the commission relates its disposition of its investigation. In that letter, dated June 10, 2002, the commission informed the licensee: "You have thirty (30) days from the date of receipt of this notice to accept this action assessed or make a written request for a hearing . . . You may also request an **informal conference . . .**" (emphasis in original). The requestor's written request for information, dated July 16, 2002, and received by the commission July 25, 2002, includes a request for a formal hearing and informal conference to controvert the commission's findings. As of the date of your request for a decision, you indicate that the licensee has been granted a conference but that the conference has not yet occurred. Thus, we find that there has been no final disposition of this matter, and the submitted documents are therefore confidential and must be withheld pursuant to section 552.101 in conjunction with section 651.203(b) of the Occupations Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

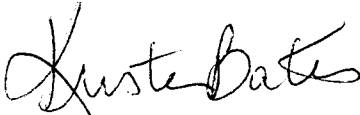
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 170049

Enc. Submitted documents

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(w/o enclosures)